



General Assembly

Distr.: General
20 July 2018
Original: English

Seventy-third session

Item 74 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and international solidarity

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on human rights and international solidarity Obiora Chinedu Okafor, submitted in accordance with Human Rights Council resolution 35/3.

* A/73/50.



Report of the Independent Expert on human rights and international solidarity

Summary

This is the second report prepared by the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, and the first addressed to the General Assembly. In the present report, submitted pursuant to Human Rights Council resolution 35/3, the Independent Expert engages with important issues and problems arising in the context of global migration in connection with the enjoyment, or lack thereof, of human rights-based international solidarity.

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I. Introduction

1. In his first report (A/HRC/38/40), presented to the Human Rights Council in June 2018, pursuant to its resolution 35/3, the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, summarized the work undertaken by his predecessors, outlined his activities since his appointment, set out his objectives and his workplan and discussed his thematic priorities. He also seized that opportunity to express his deep gratitude to his predecessors for the extensive work that they had undertaken since the establishment of the mandate in 2005, noting that his vision for the mandate flowed from, and built upon, the commendable work done by those previous mandate holders.

2. In the present report, the Independent Expert engages with important issues and problems arising in connection with one of the thematic priorities that he has established for his mandate, i.e., the enjoyment, or lack thereof, of human rights-based international solidarity in the context of global migration. This is in line with the promise he made in his first report, to study and report on issues that lie at the intersection of international solidarity with our current (albeit historically enduring) human migration challenge. An important goal in this regard is to increase our understanding of, and better illuminate, the role of human rights-based international solidarity in addressing some of the key global migration-related concerns and issues of our time. A corresponding and complementary objective is to augment our appreciation and awareness of the role of the absence, or insufficiency, of human rights-based international solidarity in exacerbating our global migration-related challenges. To that end, the specific issues and problems that are discussed and analysed in the present report are: positive expressions of human rights-based international solidarity in the global migration context (good practices); key human rights-based international solidarity gaps in the global migration context (areas to be improved); and the abusive deployment of international solidarity in the global migration context. The related topic of the suppression or criminalization of individuals and groups who show solidarity to migrants will be discussed in a separate report, to be presented to the Human Rights Council in June 2019.

3. Given that the world is currently in a moment of heightened ferment in terms of the global migration situation, and in the light of the ongoing negotiations on the adoption of the Global Compact for Safe, Orderly and Regular Migration,¹ the Independent Expert considered it timely and important to focus in the present report on the issues identified above. It is hoped that the analysis, conclusions and recommendations offered here will be taken into consideration in the implementation of both the Compact and the already existing relevant international law treaties and instruments.

4. The report is divided into seven sections. This first section introduces the report. In section II, a brief background on human rights-based international solidarity in the global migration context is provided. Section III is devoted to a discussion and analysis of the positive expressions of human rights-based international solidarity in the global migration context. In section IV, key human rights-based international solidarity gaps in the global migration context are identified and analysed. Section V focuses on the abusive deployment of international solidarity in the current global migration context. Section VI provides brief concluding remarks and some recommendations for human rights-based reform of the global migration regime.

5. It should, however, be noted at the outset that the present report does not deal with the topic of global migration in and of itself. Rather, it deals with issues that lie

¹ See International Organization for Migration (IOM), "Global compact for safe, orderly and regular migration", 11 July 2018. Available at www.iom.int/global-compact-migration.

at the intersection of human rights-based solidarity and global migration. Even so, given the vastness of the topic, the report does not consider every issue or problem that falls within this scope.

II. A brief background on human rights-based international solidarity in the context of global migration

6. The Independent Expert envisions international solidarity, as defined in the draft declaration on the right to international solidarity (A/HRC/35/35, annex 1), as the expression of a spirit of unity among individuals, peoples, States and international organizations and other stakeholders, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals. This expression thus refers to both solidarity between and among States and solidarity across borders between and among communities, groups and individuals.

7. The Independent Expert considers that international solidarity is a foundational principle underpinning contemporary international law and is based on respect for and the protection and fulfilment of human rights and fundamental freedoms for all individuals, without distinction or discrimination. As recognized in Article 1 of the Charter of the United Nations and article 28 of the Universal Declaration of Human Rights, such solidarity is necessary to developing a comprehensive response to global challenges such as migration in a manner that is consistent with the human rights obligations of States.

8. In acting in international solidarity to address the challenge posed by migration, the Independent Expert recalls that States must remain cognizant of the human rights of migrants. These rights are grounded in international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Most of the rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights are applicable to all individuals, regardless of their migration status.² In the context of migration, these rights guarantee certain protections, including the requirement that migration detention be used only as a measure of last resort (see A/HRC/20/24), and individualized and fair consideration of their cases (see A/HRC/38/41, para. 35). In addition, there are certain rights guaranteed specifically to migrants in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, such as the rights to enjoy treatment that is no less favourable than that which applies to nationals of their host State in terms of remuneration and other conditions of work/employment and to social security.

III. Positive expressions of human rights-based international solidarity in the context of global migration

A. Civil society practices

9. Some of the most important positive expressions of human rights-based international solidarity in the global migration context can be observed in the customary practices of certain progressive civil society groups around the world. These practices mostly take the following forms: the patrolling of large bodies of

² See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 10.

water by vessels belonging to humanitarian and other groups to rescue irregular migrants at risk of death by drowning; the facilitation of the entry into a given country of irregular migrants; the transportation of such migrants either into or within a country; the granting of sanctuary in churches to such migrants; the organization of mass rallies, protests and “national days of solidarity” in support of such migrants; protests on board aircrafts directed at the perceived ill-treatment of persons being deported by air; speaking out in the media in favour of irregular migrants; the provision of basic necessities of life, such as food, water and shelter, to such migrants — including those facing a serious risk of death in inhospitable border areas; and the provision of medical or legal assistance to such migrants.³ It should be noted that this is not, of course, an exhaustive list of the civil society practices that fall into the category of positive expressions of human rights-based solidarity in the global migration context.

10. A few examples of some of these civil society practices in solidarity with (irregular) migrants will suffice to flesh out the overall point that is being made in this section. National rallies/protests in 2009 in one European State resulted in the rejection of a bill that had proposed the deportation of 28,000 irregular migrants and the arrests of 5,500 people aiding them in that year.⁴ Similarly, in November 2013, the “Let’s save hospitality” campaign was instrumental in the withdrawal of a proposed law in one European country to amend article 318 bis of its Penal Code “by broadening the scope of the anti-trafficking and smuggling provisions to potentially include solidarity and humanitarian aid in broad terms at the discretion of the prosecutor”.⁵ Another important instance of a positive civil society practice in the current context is that Pope Francis is among the many faith leaders who have repeatedly appealed to believers to shelter migrants/refugees. The Pope has called upon every parish, religious community, monastery and sanctuary to take in one migrant/refugee family.⁶ In another country, one of its local farmers is now internationally renowned for providing shelter to homeless migrants.⁷ In the same country, a number of groups provide food and shelter to migrants.⁸ Finally, ADM, a group of volunteers operating in a border area in Southern Europe, prepares

³ See Shalini Bhargava Ray, “Saving lives”, *Boston College Law Review*, vol. 58, No. 4 (2017); Liz Fekete, “Europe: crimes of solidarity”, *Race and Class*, vol. 50, No. 4 (2009); Andrew Burridge, “Differential criminalization under Operation Streamline: challenges to freedom of movement and humanitarian aid provision in the Mexico-US borderlands”, *Refuge*, vol. 26, No. 2 (2009); Valentina Della Fina, *Cap Anamur Case* (2011), *Yearbook of International Humanitarian Law*, vol. 13, (2010), pp. 5 42–546; Tugba Basaran, “Saving lives at sea: security, law and adverse effects”, *European Journal of Migration and Law*, vol. 16 (2014); and Maria Lorena Cook, “‘Humanitarian aid is never a crime’: humanitarianism and illegality in migrant advocacy”, *Law and Society Review*, vol. 45, No. 3 (2011).

⁴ See Jennifer Allsopp, “Contesting *fraternité*: vulnerable migrants and the politics of protection in contemporary France”, Working Paper Series No. 82 (Refugee Studies Centre, University of Oxford, 2012).

⁵ See Mark Provera, *The Criminalization of Irregular Migration in the European Union*, Centre for European Policy Studies Paper in Liberty and Security in Europe, No. 80 (Brussels, Centre for European Policy Studies, 2015).

⁶ See Anthony Faiola and Michael Birnbaum, “Pope calls on Europe’s Catholics to take in refugees”, *Washington Post*, 6 September 2015. Available at www.washingtonpost.com/world/refugees-keep-streaming-into-europe-as-crisis-continues-unabated/2015/09/06/8a330572-5345-11e5-b225-90edbd49f362_story.html?utm_term=.6fea80f4b042.

⁷ “French farmer Cedric Herrou fined for helping migrants”, BBC News Europe, 10 February 2017. Available at www.bbc.com/news/world-europe-38930619.

⁸ See Kyle G. Brown, “France prosecuting citizens for ‘crimes of solidarity’”, *Aljazeera France*, 25 January 2017. Available at www.aljazeera.com/indepth/features/2017/01/france-prosecuting-citizens-crimes-solidarity-170122064151841.html.

approximately 6,000 meals per day for migrants and refugees and supports detained migrants in the area close to the border.⁹

11. The reason that the Independent Expert sees these kinds of civil society practices as positive expressions of human rights-based international solidarity in the global migration context is principally because it is a well-established fact that, like all other human beings, migrants are entitled to enjoy almost all internationally guaranteed and normatively universal human rights. For the most part, these human rights are not rendered inoperative or suspended because migrants either seek to enter another country or have already crossed into it. As discussed above, international solidarity is not limited to the acts of States but is also manifested by individuals, communities and groups acting according to the Universal Declaration of Human Rights, which calls upon everyone to act towards one another with a spirit of brotherhood and humanity. From the perspective of international human rights law, it is an act that promotes human rights, and therefore a positive practice, for a civil society actor to facilitate the enjoyment of such rights by irregular migrants.

B. The laws and practices of cities and other local governments

12. Many local and regional governments around the world, especially cities, have developed a range of strategies (formal and informal) for dealing with the direct consequences of the anti-immigrant laws, policies and practices that have issued from their central governments.¹⁰ In some instances, these levels of government have even had to navigate around or counter central government policies or measures.¹¹ Thus, many cities have been leading the charge for more open and fairer immigration laws, policies and practices, and have been doing so through the adoption of tactics ranging from protest, through outright defiance of national immigration initiatives, to the proactive institution of legislation, policies and practices on the integration of migrants.¹² Such efforts by cities are gaining momentum.¹³ It is in these ways that many cities have expressed their human rights-based international solidarity with (irregular) migrants.

13. For example, in one European country, five centre-left party-governed federal entities have refused to deport back to Afghanistan migrants whose asylum claims have been denied, and have adopted this stance in direct opposition to the orders of that country's Interior Ministry.¹⁴ These five entities argue that Afghanistan does not have "secure provinces," and have deployed their legal right to issue a temporary moratorium on deportations to block some of the central Government's deportation activities.¹⁵ Under the slogan "the right to a city," another city in the country concerned has demanded equal living conditions for all people living in the city, regardless of their nationality or their immigration/residence status.¹⁶ Similar pro-migrant approaches in direct contrast (in some cases) with the policies of their

⁹ See World Organisation against Torture and Observatory for the Protection of Human Rights Defenders, "Greece: ongoing crackdown on civil society providing humanitarian assistance to migrants and asylum seekers". Available at www.omct.org/human-rights-defenders/urgent-interventions/greece/2016/04/d23733/#_ftn4.

¹⁰ See Harald Bauder, "Sanctuary cities: policies and practices in international perspective", *International Migration*, vol. 55, No. 2, April 2017.

¹¹ See Provera, *The Criminalization of Irregular Migration in the European Union*.

¹² See Jessica Bither and Paul Castello, "Cities across the Atlantic raise their voices for migrants and refugees", 28 February 2017. Available at www.gmfus.org/blog/2017/02/28/cities-across-atlantic-raise-their-voices-migrants-and-refugees.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ See www.frankfurter-info.org/termine/sanctuary-city-solidarity-city.

national Governments have been adopted by other cities in Europe.¹⁷ The then mayor of a major city appealed to the public in a Facebook post in 2015 to help migrants and refugees.¹⁸ "Europe, Europeans: open your eyes," she wrote, "either we deal with a human drama using the capacity to love that makes us human, or we will end up dehumanized."¹⁹ Following this, the mayor of another city pledged to join a network of sanctuary cities and set aside an 11 million euro fund for migrant/refugee aid.²⁰ A small northern town of 20,000 inhabitants in Western Europe has welcomed migrants who are en route to the United Kingdom of Great Britain and Northern Ireland, notably by constructing a reception centre with Médecins sans frontières so as to afford decent living conditions to the migrants concerned.²¹ Another major European municipality has contested national policy against migrants, and has also provided medical assistance, information as to their legal rights and accommodation to rejected asylum seekers (deemed to be migrants).²²

14. In one North American country, certain municipalities have adopted a similar posture and have become widely known as "sanctuary cities."²³ Such cities "have laws, policies or practices" that "limit cooperation with immigration enforcement agents in order to protect low-priority immigrants from deportation, while still turning over those who have committed serious crimes."²⁴ These sanctuary cities tend to be made possible by the fact that federal officials in that country must rely on local police to help enforce federal immigration laws, but the law does not require local authorities to detain irregular immigrants just because their federal counterparts make such a request.²⁵

15. As several authors have correctly noted, sanctuary cities in that North American country tend to base their non-cooperation, in some cases, with the national immigration authorities on the basis of the following main arguments:

(a) That being an irregular migrant is not a crime. It is a civil violation in that country;²⁶

(b) That holding immigrants past the point when they should be released in order to ensure that the federal immigration authorities are able to arrest them is unconstitutional: immigrants can sue the police for unlawful holding;²⁷

(c) That nothing in national law requires localities to enforce the national immigration legislation.²⁸

¹⁷ See Provera, *The Criminalization of Irregular Migration in the European Union*.

¹⁸ See Ian Mount, "In Spain, and all of Europe, cities open doors to refugees", *Fortune*, 8 September 2015. Available at <http://fortune.com/2015/09/08/europe-refugee-crisis-spain/>.

¹⁹ Ibid.

²⁰ Ibid.

²¹ See Médecins sans Frontières, "France: frequently asked questions about MSF's work in Grande Synthe camp", 29 January 2016. Available at www.msf.org/en/article/france-frequently-asked-questions-about-msf-work-grande-synthe-camp.

²² See Provera, *The Criminalization of Irregular Migration in the European Union*.

²³ See Van Le, "Immigration 101: what is a sanctuary city?", *America's Voice*, 25 April 2017. Available at <https://americasvoice.org/blog/what-is-a-sanctuary-city/>.

²⁴ Ibid.

²⁵ See Darla Cameron, "How sanctuary cities work, and how Trump's blocked executive order could have affected them", *Washington Post*, 18 January 2017. Available at www.washingtonpost.com/graphics/national/sanctuary-cities/.

²⁶ Ibid.

²⁷ Ibid.

²⁸ See Immigrant Legal Resource Center and Washington Defender Association, FAQ on 8 USC § 1373 and federal funding threats to "sanctuary cities". Available at www.ilrc.org/sites/default/files/resources/8_usc_1373_and_federal_funding_threats_to_sanctuary_cities.pdf.

16. On the other hand, opponents of sanctuary cities in that country have argued that "immigration is a federal responsibility ... [and] you cannot have 3,000 different policies, it is chaos."²⁹ Whatever the correctness of these counter-arguments, they neither address nor detract from the accuracy of the arguments made by the sanctuary cities as outlined above.

17. Several cities in Africa, Latin America, the Middle East and Asia have similarly adopted laws, policies and practices aimed at demonstrating solidarity with and effectively integrating migrants. For example, one major Latin American city has emphasized "open and inclusive migration governance" and has pushed the national Government to increase financial support to localities for the purpose of welcoming migrants.³⁰ In one major Asian country, cities have engaged in a competition to attract diverse and highly skilled migrants, helping to spur a more coordinated national policy.³¹ In one State in the Middle East that is a significant destination country for a large number of migrants, a number of cities have created a position of Chief Resilience Officer, designed to coordinate the response to rising numbers of migrants and refugees across city government in order to ensure the effective use of resources and proper provision of guaranteed public services.³² In one African State that is an important destination State within its region, localities have partnered with United Nations agencies, the World Bank, the national Government, civil society and migrants themselves in order to create a self-reliance and resilience strategic framework in which migrants are included as "active agents of governance and development".³³

18. Cities around the world have also come together in solidarity with one another to support joint efforts to demonstrate solidarity to migrants, for example through the Global Parliament of Mayors, which, in its "migration sessions" in 2016 examined the questions of what cities mean in the context of global migration, what cities can achieve together with the experience of migrants, and what has already been done by cities to welcome and integrate migrants.³⁴

19. The overall point here is that many cities around the world have, in a range of ways and through a variety of means, expressed human rights-based international solidarity with (irregular) migrants around the world. By, among other things, expressing support for migrants, welcoming them to their territories, extending medical and other services to them, and shielding them from harsh national detention and deportation practices, these cities have helped to meet the human rights obligations of their States and have acted in accordance with the spirit and letter of the draft declaration on the right to international solidarity.

²⁹ See Cameron, "How sanctuary cities work, and how Trump's blocked executive order could have affected them".

³⁰ United Nations, "Migrants and cities: a public administration perspective on local governance and service delivery", 5 September 2017. Available at www.un.org/en/development/desa/population/events/pdf/expert/27/papers/VI/paper-Blind-final.pdf

³¹ *Ibid.*, p. 6.

³² *Ibid.*, p. 7.

³³ *Ibid.*, pp. 8–9.

³⁴ Global Parliament of Mayors, "'Cities of arrival': migrants and refugees", 10 September 2016. Available at <https://globalparliamentofmayors.org/wp-content/uploads/2017/01/Position-Paper-Cities-of-Arrival.pdf>.

C. Country-level laws and practices

Taking in migrants as an act of international solidarity

20. An important positive expression of human rights-based international solidarity in the global migration context is the fact that many countries around the world have taken in large numbers of migrants, and many have taken in a disproportionate percentage of that number, relative to the sizes of their own populations and the availability of resources. This is an important indication of human rights-based international solidarity in the global migration context, as nothing could be more indicative of a sense of or desire for oneness with foreigners than their acceptance into another country.

21. In the case of the African continent, while the most significant growth over the last two decades or so in the migration of Africans has occurred in terms of their movement from Africa to other continents, an even greater number of Africans have migrated to another African country during the same time frame.³⁵ Some African countries, such as Botswana (from the 1970s to when it achieved economic stability in the 1990s)³⁶ and Uganda, adopted an open migration policy to stimulate economic development. Uganda is considered “one of the most progressive and generous [countries] in the world [for migrants and refugees].”³⁷ Uganda insists that migrants have boosted its economy.³⁸ South Africa is the most significant destination country on the continent for migrants (as opposed to refugees).³⁹ Importantly, the continent has also taken in over 2 million non-African migrants, including Europeans.⁴⁰

22. A similar trend is discernible in Asia. Although the numbers of non-Asian-born migrants in Asia have remained at relatively low levels as a percentage of its approximately 4 billion population, numbering only about 12 million in 2015,⁴¹ many migrants have taken up residence on that continent in the last two decades or so (most of whom have been Europeans).⁴² It should also be noted that in Gulf Cooperation Council countries, such as the United Arab Emirates, Kuwait and Qatar, migrants make up high proportions of the total national populations.⁴³ For example, in 2015, migrants accounted for 88 per cent of the population in the United Arab Emirates, around 74 per cent in Kuwait and 76 per cent in Qatar.⁴⁴

23. Although, in 2015, nearly one third of the world’s international migrants (75 million) lived in Europe, over half of these (40 million) were Europeans.⁴⁵ Thus, “European to European” migration was the second largest regional migration corridor in the world in 2015 (after migration from Latin America and the Caribbean to

³⁵ For example, since 1990, the number of African migrants living outside of the region has more than doubled, with the growth in migration to Europe most pronounced, and about 15 million African-born migrants lived outside the region in 2015; see IOM, *World Migration Report 2018* (Geneva 2017). Available at https://publications.iom.int/system/attachments/pdf/wmr_2018_en_chapter3.pdf

³⁶ *Ibid.*, p. 19.

³⁷ See World Bank, “Uganda offers refugees a home away from home”, 31 August 2016. Available at www.worldbank.org/en/news/feature/2016/08/31/uganda-offers-refugees-home-away-from-home.

³⁸ Linda Givetash, “How have refugees boosted Uganda’s economy?”, World Economic Forum, 17 November 2015. Available at www.weforum.org/agenda/2015/11/how-have-refugees-boosted-ugandas-economy/.

³⁹ See IOM, *World Migration Report 2018*.

⁴⁰ *Ibid.*, p. 2.

⁴¹ *Ibid.*, p. 13.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 14.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, p. 25.

Northern America).⁴⁶ Nonetheless, the population of non-European migrants living in Europe reached over 35 million in 2015.⁴⁷ Countries such as Germany and Sweden have taken in large numbers of migrants (and refugees) over the years.⁴⁸ In 2015, Germany had the largest foreign-born population in Europe, 12 million.⁴⁹ The populations of France and the United Kingdom each included over 7 million foreign-born people in 2015.⁵⁰ In 2016, nearly 390,000 people arrived in Europe through the Mediterranean region by both land and sea, over 360,000 of whom arrived by sea.⁵¹ Germany and Sweden took in the bulk of these migrants and refugees.⁵² The latter were very good examples of positive expressions of human rights-based international solidarity in the global migration context. It should also be noted, however, that large segments of the populations of many European countries have emigrated to other continents.⁵³ For example, the United Kingdom has the third largest European emigrant population, numbering almost 5 million.⁵⁴

24. North America is mostly a migrant-receiving region. As at 2015, over 51 million migrants resided in North America.⁵⁵ The size of its immigrant population doubled over the 25 years before 2015.⁵⁶ The vast majority of immigrants to North America have been Latin American/Caribbean, Asian or European.⁵⁷ The United States of America has experienced relatively high levels of immigration for a long time, especially from Europe, Mexico, India and China.⁵⁸ The immigrant population of Canada continues to increase significantly and in 2015 about 22 per cent of its total population was foreign born.⁵⁹ Canada has comparatively robust legal immigration pathways that can serve as a very good example for other countries.⁶⁰ In 2015, Canada admitted over 270,000 new permanent residents through these pathways, the highest number since 2010.⁶¹ Such legal migration pathways are also a positive expression of human rights-based international solidarity in the global migration context.

25. Although the key feature of migration in Latin America and the Caribbean is emigration to North America (nearly 25 million migrants had made the journey north by 2015),⁶² there is also a relatively stable inflow of immigrants into the region.⁶³ By 2015, over 2 million immigrants had arrived in the region.⁶⁴ Although it is one of the largest sources of emigration in the world, Mexico is increasingly becoming a host

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid., p. 30.

⁴⁹ Ibid., p. 27.

⁵⁰ Ibid.

⁵¹ Ibid., p. 30.

⁵² See Wesley Dockery, "Two years since Germany opened its borders to refugees: a chronology", Deutsche Welle News Agency, 4 September 2017. Available at www.dw.com/en/two-years-since-germany-opened-its-borders-to-refugees-a-chronology/a-40327634; and Timothée De Rauglaudre, translated by Camille Raimondo, "Sweden: refugees should be able to start over", *Le Journal International*, 30 January 2016. Available at www.lejournalinternational.fr/Sweden-refugees-should-be-able-to-start-over_a3474.html.

⁵³ See IOM, *World Migration Report 2018* (see footnote 38).

⁵⁴ Ibid., p. 69.

⁵⁵ Ibid., p. 82.

⁵⁶ Ibid., p. 82.

⁵⁷ Ibid., p. 83.

⁵⁸ Ibid., p. 85.

⁵⁹ Ibid., p. 85.

⁶⁰ See www.npr.org/sections/parallels/2017/01/26/511625609/for-a-stark-contrast-to-u-s-immigration-policy-try-canada.

⁶¹ Ibid., p. 86.

⁶² Ibid., p. 82.

⁶³ Ibid., pp. 79 and 80.

⁶⁴ Ibid., p. 81.

country as well.⁶⁵ By 2015, its foreign-born population had grown to over 1 million.⁶⁶ Argentina and Brazil are also notable in terms of the significant increases that have occurred since 2010 in the sizes of their already large immigrant populations.⁶⁷

The establishment of humanitarian exemptions to anti-smuggling legislation

26. Although many countries around the world criminalize those assisting irregular migrants to enter or remain on their territories and do so without significant regard to the humanitarian nature of the act,⁶⁸ a small number of European States have enacted clauses in their immigration laws introducing some kind of humanitarian exemption to these offences. All of these humanitarian exemptions are, to varying degrees, positive expressions of human rights-based international solidarity in the global migration context. These exemptions will be discussed in more detail in a forthcoming report.

Advocacy by States in favour of the rights of irregular migrants and their moral allies

27. Some States have championed the rights of both irregular migrants and their moral allies. For example, a very small group of European Union States had unsuccessfully insisted on a mandatory humanitarian exemption being introduced into the then draft European Union Facilitation Directive.⁶⁹ Another excellent example of human rights-based international solidarity in this context is that one European State has recently allowed over 600 migrants and asylum seekers who were initially rejected by another European State to disembark on its territory. These migrants have been allowed a 45-day residency period, after which the authorities will examine each individual case on its “merits”.⁷⁰ A spokesperson for the Interior Ministry said, “It was a wake-up call for all European Union countries to stop looking the other way and start looking for common solutions.”⁷¹ Some States have also made significant efforts to ensure that respect for the human rights of global migrants is integrated into the Global Compact for Safe, Orderly and Regular Migration.

D. Regional laws and practices

28. Some regional-level laws and practices have contributed significantly or have at least aimed to contribute in that measure to the enhancement of human rights-based international solidarity in the global migration context. Building on the foundation laid by the defunct Organization of African Unity (OAU), in 2015, the Assembly of Heads of State and Government of the African Union issued the Declaration on Migration (Doc. Assembly/AU/18(XXV)). The Declaration committed the African Union and its member States to speeding up the implementation of continent-wide visa free regimes and to expediting the operationalization of the single African passport, to be issued by African Union member States, which would facilitate the free movement of persons on the continent. This instrument and the related

⁶⁵ Ibid., p. 79.

⁶⁶ Ibid., p. 79.

⁶⁷ Ibid., p. 80.

⁶⁸ See Provera, *The Criminalization of Irregular Migration in the European Union*.

⁶⁹ See Rachel Landry, “The ‘humanitarian smuggling’ of refugees: criminal offence or moral obligation?”, Working Paper Series No. 119 (Refugee Studies Centre, University of Oxford, 2016).

⁷⁰ Maria Martin, “Migrants on board ‘Aquarius’ granted 45-day special permit to stay in Spain”, *El País*, 18 June 2018. Available at https://elpais.com/elpais/2018/06/18/inenglish/1529305036_939444.html.

⁷¹ Ibid.

implementation measures contribute to enhancing human rights-based international solidarity in the global migration context, because they will allow African migrants easier access to countries that are not their own and obligate those States to accommodate them to the extent required under the instrument.

29. The European Union has also made some efforts to encourage its Member States to work in solidarity with each other to tackle what it sees as the migration crisis that it is facing, and to share the “burdens” and benefits of migration more evenly across its membership than has been the case to date.⁷² The European Union has also instituted a visa-free regime within its borders, something that has benefited its citizens and others already within the European Union’s external borders.⁷³ Other positive efforts made by the European Union to strengthen international solidarity for migrants are those to strengthen the rights of unaccompanied minors who migrate to European Union member States. In addition to existing international instruments such as the United Nations Convention on the Rights of the Child, the European Union has enacted policies which will prevent minors being transferred from one European Union State to another and mandated that European Union member States must give minors the chance to file an application for protection once they enter the European Union.⁷⁴

30. Another instance of the positive expression of human rights-based international solidarity in the global migration context by an European regional body is the decision of the European Committee of Social Rights of the Council of Europe in a case brought by the Conference of European Churches (complaint No. 90/2013).⁷⁵ In that decision, the Committee concluded that the social welfare system of the country that was being litigated against violates the rights of undocumented migrants and that it is not in conformity with the articles 13.4 (the right to social and medical assistance) and 31.2 (the right to housing) of the European Social Charter. While the Conference of European Churches claimed that there had been a breach of the European Social Charter, the relevant Government claimed that the European Social Charter was not applicable to the case of irregular migrants. The Committee ruled that denying access to housing and health care to adult irregular migrants who were without resources constitutes a violation of the European Social Charter, namely, articles 13.4 and 31.2. The Committee concluded that the relevant Government must provide adequate shelter to undocumented adult migrants, regardless of whether they have been requested to leave the country. The Committee argued, in line with the Conference of European Churches, that access to shelter is a matter of “human dignity” and referred approvingly to the previous case law of the collective complaints mechanism of the European Social Charter with regard to housing and homelessness. Not only is this decision itself an act of solidarity, in the sense that its underlying rationale stems from an understanding of the fact that international human rights law guarantees human rights to all persons, including migrants, it also provides a framework and rationale for a legal obligation on the relevant Governments to express international solidarity to irregular migrants by guaranteeing them certain social rights.

⁷² Ian Traynor, “European Union plans migrant quotas forcing States to ‘share’ burden”, *The Guardian*, 10 May 2015. Available at www.theguardian.com/world/2015/may/10/european-commission-migrant-quota-plan-mediterranean-crisis

⁷³ See European Commission, Migration and Home Affairs, “Schengen, borders and visas”, 2018. Available at https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas_en

⁷⁴ See Theresa Papademetriou, “European Union: new rules on unaccompanied minors entering the European Union illegally”, *Global Legal Monitor*, 9 July 2014. Available at www.loc.gov/law/foreign-news/article/european-union-new-rules-on-unaccompanied-minors-entering-the-eu-illegally/

⁷⁵ See European Committee of Social Rights, *Conference of European Churches v. the Netherlands*, complaint No. 90/2013. Available at www.coe.int/en/web/turin-european-social-charter/processed-complaints

E. Global laws and practices

31. Certain global-level laws and practices have the potential to enhance, or have had the effect of enhancing, human rights-based international solidarity in the global migration context. For instance, the Global Compact for Safe, Orderly and Regular Migration, which is currently being negotiated, has the potential to contribute to some extent to the enhancement of the enjoyment of human rights-based international solidarity in the global migration context. Its cooperative framework and its clear objectives (such as minimizing the adverse drivers and structural factors that compel people to migrate, as well as enhancing availability and flexibility of pathways for regular migration) are important in this regard.⁷⁶

32. As mentioned previously, a number of international human rights treaties have guaranteed certain rights either to migrants specifically, or to all human beings in general.⁷⁷ The guarantee to migrants of the rights contained in these treaties made among States throughout the world is in and of itself a positive expression of human rights-based international solidarity in the global migration context. For example, both the right to life as contained in the International Covenant on Civil and Political Rights and the right to housing as contained in the International Covenant on Economic, Social and Cultural Rights are clearly ensured to the benefit of migrants, precisely because these rights are guaranteed to everyone. As the *Conference of European Churches* case shows, these textual guarantees of rights can have significant impact in the real world of a migrant's life. Similarly, the distinction made in the Protocol against the Smuggling of Migrants by Land, Sea and Air between organized criminal smugglers and humanitarian actors who assist irregular migrants can and has been beneficial to the latter group; as happened, for example, in the *R v. Appulonappa* case in Canada.⁷⁸ Clearly, the rights guaranteed under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, such as the rights to enjoy treatment that is not less favourable than that which applies to nationals of their host State in terms of remuneration and other conditions of work/employment (art. 25), and to social security (art. 27), are guaranteed to migrants.

33. Adherence by States and other duty-bearers to the right of peoples and individuals to international solidarity, as contained in the draft declaration on the right to international solidarity (see A/HRC/35/35), will greatly enhance the enjoyment of this right by irregular and other migrants, and will serve as an example of the positive expression of human rights-based international solidarity in the global migration context. Although still a draft instrument, it is indicative of the standards to be attained if human rights-based international solidarity is to be realized much more fully in the global migration and other relevant contexts.

⁷⁶ IOM, "Global compact for safe, orderly and regular migration: zero draft", 5 February 2018.

Available at https://refugeesmigrants.un.org/sites/default/files/180205_gcm_zero_draft_final.pdf.

⁷⁷ See the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air; see also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁷⁸ See <https://scc-esc.lexum.com/scc-esc/scc-esc/en/item/15648/index.do>.

IV. Key international solidarity gaps in the context of global migration

34. Regrettably, many international solidarity gaps remain in the socio-legal responses of States and other stakeholders to global migration flows; often portending or producing highly negative consequences for the human rights of migrants. Such gaps exist in a multiplicity of dimensions and contexts. On the geopolitical plane, significant South-South, North-North and intra-country human rights-based international solidarity gaps are discernible. In terms of issue areas, many legal frameworks for the regulation or protection of migrants, many domestic social protection systems for migrants and many socio-legal arrangements for the regulation of the rendering of humanitarian aid to migrants are riven by certain human rights-based international solidarity gaps. Importantly, not even the civil society realm is exempt from such gaps. For, all too often, significant human rights-based international solidarity gaps also exist in the behaviour of certain elements within civil society towards migrants. Each of these kinds of human rights-based international solidarity gaps will now be discussed and illustrated with a few examples.

A. South-South gaps

35. Within the global South, some countries do significantly more than others to receive and care for global migrants. Geographic proximity is, of course, a key factor that determines which countries absorb more migrants than others. However, other factors — such as the robustness of a country's economy and the friendliness of its migration regime — also play important roles. For example, the fact that the social economy of South Africa is much more robust, relative to almost every other African country is a key factor in attracting the very large numbers of immigrants who now reside there.⁷⁹ Most African countries, however, do not do as much as Uganda, Ethiopia, South Africa, and others, to absorb migrants (loosely defined).⁸⁰ For example, in a number of African countries (gateways on the African-European migration routes), the record of treating migrants with respect and dignity is very far from exemplary. As the International Organization for Migration, for example, has found, protection challenges and serious human rights violations along these corridors are profound and include deaths at sea, in the desert and in other transit locations; enslavement, disappeared migrants, exploitation, physical and emotional abuse, trafficking, smuggling, sexual and gender-based violence, arbitrary detention, forced labour, ransom demands and extortion; and other human rights violations.⁸¹ In Latin America, new and diversified flows throughout the region have prompted a response by transit and destination countries to increase border enforcement and protection.⁸² All of the issues discussed in this paragraph point to a set of important human rights-based international solidarity gaps that need to be robustly and urgently redressed.

B. North-North gaps

36. A similar human rights-based international solidarity gap exists within the global North, where a small number of countries tend to carry the bulk of the responsibility of absorbing global migration flows (loosely defined), in particular flows originating from the global South. Despite recent trends in the opposite

⁷⁹ See IOM, *World Migration Report 2018*.

⁸⁰ *Ibid.*, pp. 44–54.

⁸¹ *Ibid.*, pp. 50.

⁸² *Ibid.*, pp. 75–81.

direction, countries such as Sweden, Canada, Germany, France and the United States have historically stood out (whatever their current positions).⁸³ Another group of countries, mainly in Eastern, Central and Southern Europe, have stood out as resisting pressure to do their fair share in this regard.⁸⁴ Leaders in two Eastern European countries have even gone as far as claiming that taking in migrants will detract from the "christianness" and "cultural purity" of Europe.⁸⁵ The new leadership in one Southern European country is pursuing ever more hard-line anti-immigrant policies.⁸⁶ Anti-immigrant barriers have also been raised in many other countries of the global North, including a major North American country, where a new populist regime has been pursuing a harsh crackdown on immigration.⁸⁷ The key point here, however, is the disproportionate absorption of migrant flows over time by only a handful of global North countries. Clearly, there is a human rights-based international solidarity gap here that needs to be filled through greater international cooperation and action in this area.

37. Similarly, within the European Union, the division of responsibility for the management and absorption of migrant flows from outside Europe has been largely disproportionate, whether assessed on a per capita basis or in terms of the aggregate amount of resources available to the countries concerned to deal with such flows. Here again, a very small group of States has, at least until very recently, tended to assume the bulk of the responsibility: Sweden and Germany being the most notable.⁸⁸ The recent spat between two European countries over the refusal of one of them to allow migrants to disembark at one of its sea ports from a boat that had rescued them in distress at sea aptly illustrates, not just the increasing lack of solidarity of the Government concerned in this kind of context, but also the need for a clearer, more structured and more equitable distribution of responsibility among European States in this area.⁸⁹ This is a human rights-based international solidarity gap in the migration context that needs to be addressed through urgent intra-European Union cooperation and action. Despite its limitations, the recent agreement of 28 June

⁸³ United Nations, Department of Economic and Social Affairs, "International migration report 2015 (highlights)", 2016. Available at www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf, Chris Harris, "Fact check: how many refugees has each European Union country taken in?", Euronews, 26 September 2017 (see table "How many of the 160,000 each country took in"). Available at www.euronews.com/2017/09/26/fact-check-how-many-refugees-has-each-eu-country-taken-in.

⁸⁴ Gabriela Baczynska and Sara Ledwith, "How Europe built fences to keep people out", Reuters, 4 April 2016. Available at www.reuters.com/article/us-europe-migrants-fences-insight-idUSKCN0X10U7.

⁸⁵ See Faiola and Birnbaum, "Pope calls on Europe's Catholics to take in refugees" (see footnote 9); see also Shaun Walker, "Hungarian leader says Europe is now 'under invasion' by migrants", *The Guardian*, 15 March 2018. Available at www.theguardian.com/world/2018/mar/15/hungarian-leader-says-europe-is-now-under-invasion-by-migrants.

⁸⁶ See Steve Scherer and Massimiliano Di Giorgio, "Italy and France try to patch up migrant row, draw papal rebuke", Reuters, 14 June 2018. Available at www.reuters.com/article/us-europe-migrants-italy/italy-and-france-try-to-patch-up-migrant-row-draw-papal-rebuke-idUSKBN1JA1D6.

⁸⁷ See Stephen Collinson, "United States reckons with Trump's war on immigration", CNN, 14 June 2018. Available at www.cnn.com/2018/06/14/politics/donald-trump-immigration-jeff-sessions/index.html.

⁸⁸ See Rachael Cerrotti, "Sweden was among the best countries for immigrants. That's changing", Public Radio International: Global Post, 11 September 2017. Available at www.pri.org/stories/2017-09-11/sweden-was-among-best-countries-immigrants-thats-changing; and De Rauglaudre (translated by Camille Raimondo), "Sweden: refugees should be able to start over" (see footnote 55).

⁸⁹ See Scherer and Di Giorgio, "Italy and France try to patch up migrant row, draw papal rebuke".

2018,⁹⁰ reached in Brussels by European Union States, is designed in part to share the benefits and burdens of global migration flows to Europe.

C. Intra-country gaps in the social and legal protection of migrants

38. Unfortunately, anti-migrant rhetoric, populism and xenophobia are on the rise and have formed a part of customary State practice in all too many countries around the world, leading to harsh anti-immigrant sentiments, policies, laws and practices. Throughout the world, rhetoric about the supposed threat that immigrants pose to national identity is on the rise, and is in some countries even echoed or utilized by the governing elites.⁹¹ In one powerful North American country, senior government officials have too often used racist and xenophobic language to describe immigrants and have also tended to pursue very harsh anti-immigrant policies, laws and practices, such as separating children from their parents in order to discourage irregular migration,⁹² banning Muslims from certain countries from entering its territory (albeit with some exceptions)⁹³ and attempting to punish sanctuary cities.⁹⁴ These facts alone are evidence of some of the serious human rights-based international solidarity gaps that exist within many countries in relation to the management of global migration. This is because such laws, policies and rhetoric are not predicated on a recognition of our common humanity and are motivated not by a view of individual migrants as human beings and rights-holders, but rather as members of amorphous groups that are asserted as presenting a threat.

39. Similar serious human rights-based international solidarity gaps in relation to the protection of migrants can be found in other parts of the world. In the African context, there has been a trend towards the securitization of immigration in many countries on that continent, i.e., the treatment of migration as primarily a matter of national security. For example, one East African country at one point announced plans to build a wall on its borders with one of its neighbours and has also directed all urban refugees to refugee camps and ordered mass arrests of irregular migrants.⁹⁵ While the Independent Expert is cognizant of the security needs of the countries concerned, it should be noted that the pursuit of such securitization measures might lead to serious human rights-based international solidarity deficits. This is because these measures can too often lead to the undue association of migrants with security threats to the country concerned, their mistreatment at the hands of the agents of that State and the reinforcement of existing mental and physical barriers to engendering a wider sense of our inherent humanity and belonging.

⁹⁰ See Reuters, "Details of European Union agreement on migration", 29 June 2018. Available at www.reuters.com/article/us-eu-summit-conclusions-migration/details-of-eu-agreement-on-migration-idUSKBN1JP0DS

⁹¹ See Faiola and Birnbaum, "Pope calls on Europe's Catholics to take in refugees" (see footnote 9).

⁹² See Office of the United Nations High Commissioner for Human Rights (OHCHR), "United Nations experts to United States: 'release migrant children from detention and stop using them to deter irregular migration'", 22 June 2018. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E.

⁹³ See Executive Order #13769, Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed Reg 8977 27 January 2017. This Executive Order was subsequently amended after being suspended/struck down by the courts; see Executive Order #13780, Protecting the Nation from Foreign Terrorist Entry into the United States, 82 Fed Reg 13209 6 March 2017. This very similar second order was also struck down by the courts. However, the United States Supreme Court later upheld it, albeit within certain limits.

⁹⁴ See Reuters, "United States Justice Department sues California over its 'sanctuary' laws", 7 March 2018. Available at www.cnbc.com/2018/03/07/us-justice-department-sues-california-over-its-sanctuary-policies.html.

⁹⁵ See African Union, "Evaluation of the African Union migration policy framework for Africa".

40. Significant human rights-based international solidarity gaps also exist in relation to the guarantee of social rights to migrants around the world. For example, in response to the social protection gaps that exist under the laws of one European Union country, the European Committee of Social Rights has, as we have seen, decided that that country's system, which does not extend the right to emergency social and medical assistance under article 13 (4) of the European Social Charter to irregular migrants, was in violation of its obligations under the European Social Charter,⁹⁶ as the article grants foreign nationals entitlement to such assistance. The beneficiaries of this right to social and medical assistance are foreign nationals who are lawfully present in a particular country but do not have resident status and those who are in an irregular situation. While the European Committee of Social Rights has affirmed that States are required to provide accommodation, food, emergency care and clothing for those concerned, in order for them to cope with an immediate state of need, States are not required to apply other extended social protection floors, such as guaranteed income arrangements, to irregular migrants.⁹⁷ The same is true in many other States that have set up comprehensive social protection policies, such as the right to education, health care, adequate housing and employment, that are restricted to nationals and certain categories of migrants. For instance, it is quite common in the Middle East and in South-East Asia for many migrants to struggle to access social protection services, sometimes in part linked to abusive recruitment practices for migrant workers.⁹⁸ In addition, the requirements for official documentation to access these kinds of social protection places irregular migrants in a particular position of vulnerability, as they face poverty and discrimination in their access to social and economic rights (see A/68/333 and A/71/285).

D. Civil society gaps

41. Against civil society's most well-known and celebrated tendency to serve as a bulwark for human rights within the global migration context, elements within it can sometimes act in ways that undermine human rights, including the proposed right to international solidarity. Anti-immigrant groups or mobs around the world have provided ample evidence of this tendency. For example, Defend Europe and other such groups have seized upon the manufactured narrative around the participation of non-governmental organizations in human trafficking to launch a struggle against humanitarian non-governmental organizations showing human rights-based international solidarity by undertaking rescues at sea of migrants at risk of death.⁹⁹ The anti-immigrant boat operation by Defend Europe was launched with the aim of actively disrupting such organizations as they sought to express international solidarity in that way to global migrants. While Defend Europe had to abandon its mission because of its disruption by "antifascists," it was to claim success by arguing that certain States in the Mediterranean region had already done its job for it.¹⁰⁰

⁹⁶ European Committee of Social Rights, *Conference of European Churches v. the Netherlands*, complaint No. 90/2013, decision on the merits of 1 July 2014 (see footnote 78).

⁹⁷ See Council of Europe, European Committee of Social Rights, Conclusions XIV-1, United Kingdom, p. 845. Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54–57. Conclusions XIV-1, Netherlands, p. 598. Conclusions XIV-1, Iceland, p. 417.

⁹⁸ Economic and Social Commission for Asia and the Pacific, "Asia-Pacific migration report 2015: migrants' contributions to development". Available at www.unescap.org/sites/default/files/SDD%20AP%20Migration%20Report%20report%20v6-1-E.pdf.

⁹⁹ See Liz Fekete, Frances Webber and Anya Edmond-Pettitt, "Humanitarianism: the unacceptable face of solidarity" (London, Institute of Race Relations, 2017).

¹⁰⁰ See Maya Oppenheim, "Defend Europe: far-right ship stopping refugees ends its mission after a series of setbacks", *The Independent*, 21 August 2017. Available at www.independent.co.uk/news/world/europe/defend-europe-far-right-ship-stop-refugees-mediterranean-end-mission-c-star-setbacks-migrant-boats-a7904466.html.

Defend Europe is still operating, “with some far-right activists now prepared to resort to open violence”.¹⁰¹ What is more, “powerful extreme-right electoral parties are also mobilizing, and vigilante and even paramilitary organizations are emerging” to take action against “those who act in solidarity with refugees and migrants.”¹⁰² Racist civil society groups such as “the alternative right” are opposed to any form of solidarity with migrants or the protection of the basic rights of migrants.¹⁰³ There have also been other high-profile campaigns against the expression of solidarity with migrants, the targeting of certain non-governmental organizations and their volunteers and claims of defending Europe from migrants and refugees.¹⁰⁴ As troubling is the fact that, in certain countries, private individuals and groups have organized themselves to patrol their country’s borders or round up irregular migrants.¹⁰⁵ In one African country, as elsewhere, despite the efforts of many Governments to prevent it, individuals and mobs have too often set upon migrants and attacked, maimed or killed them.¹⁰⁶ All these are serious international solidarity gaps — caused by the actions of regressive civil society groups — that need to be addressed more effectively through focused local and international action.

V. Abusive deployment of international solidarity in the context of global migration

42. Despite the many good human rights-based international solidarity practices that have been discussed previously, there have also been all too many instances and situations in which international (in particular, inter-State) solidarity has, unfortunately, been either abusively deployed or utilized in ways that do not protect the human rights of global migrants. Thus, international solidarity (defined as a unity of purpose and action) has sometimes been expressed in a way that undermines human rights, amounting to an abuse of solidarity. Examples of the instances and situations in which this kind of “instrumentalization”¹⁰⁷ of international solidarity has occurred will be discussed in the remainder of this section.

43. Many such instances and situations have arisen as a result of the execution of the European Union’s “prevention agenda” in relation to global migration, in particular across the Mediterranean Sea. As one scholar has correctly noted, this agenda “seeks to prevent migrants from reaching the coastal shore as to be able to commence their maritime journey [across the Mediterranean Sea]; it seeks both to incentivize migrants to use legal routes and equally deter them through security measures from boarding.”¹⁰⁸ As she also observes, “this agenda is targeted primarily through cooperation with third countries, alternative legal avenues, and by a form of deterrence that is sought to be secured through reinforced border surveillance”.¹⁰⁹ Other instances and situations in which international solidarity has been

¹⁰¹ Fekete, Webber and Edmond-Pettitt, “Humanitarianism”, p. 31.

¹⁰² *Ibid.*, p. 32.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, pp. 34 and 35.

¹⁰⁵ See Viceland, “We met the vigilantes patrolling the US-Mexico border”, 6 March 2018. Available at www.vice.com/en_ca/article/kzpj7v/we-met-the-vigilantes-patrolling-the-us-mexico-border, and Csaba Tibor Toth, “Volunteers and vigilantes watch over refugees in Hungary”, Deutsche Welle, 28 August 2015. Available at www.dw.com/en/volunteers-and-vigilantes-watch-over-refugees-in-hungary/a-18677868.

¹⁰⁶ See Dapo Akinrefon and others, “Xenophobic attacks: efforts to stop killings in S-Africa not working — FG”, *The Vanguard*, 18 May 2018. Available at www.vanguardngr.com/2018/05/991733/.

¹⁰⁷ See Allsopp, “Contesting *fraternité*” (see footnote 7).

¹⁰⁸ See Basaran, “Saving lives at sea” (see footnote 6).

¹⁰⁹ *Ibid.*

instrumentalized in ways that result in the violation of the rights of global migrants can be found in North America as a result of pressure by a strong State in that region on a neighbouring country to limit the transit of Central American migrants through the latter's territory; and in the coerced or pressured "voluntary" returns of migrants from their "host" States to their home countries, with the (often incentivized) cooperation of that State.¹¹⁰

44. The 2015 joint action plan between the European Union and a country on the border of Europe and Asia to stem the flow of migrants into the European Union area is one of the products of the implementation of the European Union's prevention agenda. According to one study, under the agreement, signed on 29 November 2015, the European Union will provide €3 billion to the country concerned to manage the migrant/refugee situation in that country, aimed at preventing such persons from reaching European Union countries.¹¹¹ Under the joint action plan, that country will be in charge of sea patrols and enforce border restrictions to manage the flow of migrants/refugees to Europe, combat human trafficking and passport forgeries and return migrants to their countries of origin if they do not meet refugee requirements, thereby becoming a "wall of defence" against what the European Union sees as a flood of refugees into its territory.¹¹² The clear intent of the European Union in signing the agreement can be seen in the report of 10 February 2016 published by the European Commission on the progress of the country concerned in implementing the joint action plan.¹¹³ Among the conclusions and recommendations contained in the report are that the partner country needs to, *inter alia*, "make significant progress in preventing irregular departures of migrants and refugees from its territory."¹¹⁴

45. While the European Union and the country concerned are of course entitled to cooperate and act in solidarity with each other in the global migration context, and while European Union States enjoy certain (non-absolute) sovereign rights to limit entry into their territories, "the spirit in which this joint action plan was drafted, with the intention to limit migrants from entering the European Union" at a time of great need,¹¹⁵ is troubling from the perspective of the protection of international solidarity in the effort to protect global migrants and their human rights. This is because shutting the door to migrants in such a way at a time when they are in desperate situations does not advance the protection of their human rights, and likely endangers these rights, as the alternative pathways to enter Europe are few and far between. What is more, as one scholar has correctly noted, although the European Union's partner country in the current regard is to be commended for hosting one of the world's largest migrant/refugee populations, there is good cause to worry about the human rights situation there. For instance, in February 2018, the European Committee of Social Rights issued a statement calling on that country to protect the rights of migrants and refugees in the aftermath of the state of emergency that had been declared there.¹¹⁶ Thus, this Agreement can be faulted, to some extent, as an instance of the deployment

¹¹⁰ See, for example, Rodrigo Dominguez-Villegas and Victoria Rietig, "Migrants deported from the United States and Mexico to the northern triangle: a statistical and socioeconomic profile" (Washington, D.C., Migration Policy Institute, 2015).

¹¹¹ See Library of Congress, Global Legal Research Center, "Refugee law and policy in selected countries" (Turkey), 2016. Available at www.loc.gov/law/help/refugee-law/turkey.php

¹¹² See the EU/Turkey 2015 Joint Action Plan, 29 November 2015.

¹¹³ See European Commission, EU-Turkey joint action plan: implementation report, 10 February 2016, COM (2016) 85 final, annex 1.

¹¹⁴ *Ibid.*

¹¹⁵ See Elizabeth Collett, "The paradox of the European Union-Turkey refugee deal", Migration Policy Institute, 2016. Available at www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal.

¹¹⁶ See www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2018-0091&language=EN.

of international solidarity in the global migration context that detracts, or at least could detract, from the protection of the human rights of global migrants.

46. The attempts by both the European Union and individual European States to act in solidarity with a currently unstable North African country in order to stem the flow of migrants into the European Union area is another example of the deployment of international solidarity in the global migration context that harms, or at least has the potential to harm, the human rights of migrants. For example, in return for funding, the "authorities in this conflict-ridden country have now signed and implemented a number of such agreements with certain European Union countries".¹¹⁷ These agreements do not tend to emphasize or even mention, in a substantive way, the protection of the human rights of migrants.¹¹⁸ For its own part, the European Union has adopted at least seven different programmes under the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration in Africa, all directed at this particular country.¹¹⁹ The European Union argues that the programmes are part of its international cooperation efforts aimed at expressing solidarity with global migrants so as to prevent humanitarian emergencies at sea, stop human trafficking/smuggling, and ensure capacity-building for the authorities in the relevant country.¹²⁰ Yet these programmes tend to feed into the European Union's control-centric focus in its global migration cooperation with the country concerned here; i.e., its objective of stemming the flow of migrants who seek to reach Europe by crossing North Africa and the Mediterranean Sea. The well-known fact that the human rights of migrants have been and are being seriously abused in that country makes the focus of these agreements on preventing global migrants from departing from there and entering Europe troubling from a human rights perspective.¹²¹ Unfortunately, therefore, the deployment of international solidarity has in this case conduced to the violation of the human rights of global migrants.¹²²

47. As has been discussed above, under pressure from a powerful North American country, a neighbouring country has implemented a border enforcement plan to shut its borders to Central Americans fleeing gang violence and serious economic deprivation in their own countries and prevent them from reaching that country's northern neighbour, which is the preferred destination of most of them.¹²³ This country now serves as a first line of defence against these migrants for its powerful neighbour. However, this plan has not deterred the flow of Central American migrants to both countries and has only made their journeys towards the stronger country

¹¹⁷ For example, see the Italy-Libya Memorandum of Understanding, 2 February 2017, see also Anja Palm, "The Italy-Libya memorandum of understanding: the baseline of a policy approach aimed at closing all doors to Europe?", Istituto Affari Internazionali, 2 October 2017. Available at <http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>.

¹¹⁸ Ibid.

¹¹⁹ See European Commission, "EU Emergency trust fund for Africa: Libya". Available at https://ec.europa.eu/trustfundforafrica/region/north-africa/libya_en.

¹²⁰ Ibid.

¹²¹ See Amnesty International, "Libya's dark web of collusion: abuse against Europe-bound refugees and migrants" (London, 2017). Available at www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF.

¹²² See OHCHR, "Libya must end 'outrageous' auctions of enslaved people, United Nations experts insist", 30 November 2017. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22475&LangID=E.

¹²³ See Azam Ahmed, "Step by step on a desperate trek by migrants through Mexico", *New York Times*, 8 February 2016. Available at www.nytimes.com/2016/02/08/world/americas/mexico-migrants-central-america.html.

significantly more treacherous, thereby imperilling a number of their human rights, including their rights to life, dignity and liberty.¹²⁴

48. While every State is entitled (within limits) to manage its borders as it sees fit, such sovereignty is clearly not absolute. The management and control of borders cannot be effected in a way that imperils certain of the most basic human rights of global migrants — such as their rights to life and dignity. While global migrants assume some risk in deciding to embark on such perilous journeys in the first place, the Independent Expert is of the view that the aggravation of that risk by the laws, policies and practices of home, transit or destination States to the extent of imperilling their fundamental rights clearly violates international human rights law.

VI. Conclusions and recommendations for human rights-based reform

49. In the present report, the Independent Expert has considered many of the issues that affect human rights-based international solidarity in our current global migration context. Given the salience and importance of both human rights-based international solidarity and global migration in our time, and in particular with regard to the imperative need to protect global migrants from serious and rampant violations of their human rights around the world, States, civil society and other stakeholders must vastly increase their efforts to address the concerns raised in the present report. The central role of the General Assembly in ensuring that this preferred course is taken cannot be over-emphasized. The Independent Expert hopes that this august assembly will rise to the challenge, including through ensuring the adoption and robust implementation, and if necessary revision, of the Global Compact for Safe, Orderly and Regular Migration.

50. In the light of the above discussion, the Independent Expert makes a few key recommendations to States and other stakeholders, as follows:

(a) A mindset reset: a change in the prevalent socio-legal mindset about global migration is urgently needed in almost every country. As one global leader has noted, rather than view global migrants as “threats to our comfort,” all countries, civil society and peoples must work even more closely together to ensure respect for the dignity and human rights of global migrants, and to create a socio-legal environment that values them as “persons whose life experience and values can contribute greatly to the enrichment of our society;”¹²⁵

(b) The expansion and celebration of pro-migrant solidarity: The positive expressions of human rights-based international solidarity by elements within civil society, cities and other local governments, States and regional organizations, and at the global level, should be reinforced, expanded, supported by others and celebrated more widely as imperative pro-human rights and pro-humanitarian acts that save the lives of thousands of global migrants; ensure that they are treated with the dignity to which they are entitled; and advance global integration, development and justice;

(c) The urgent creation of regular migration pathways: States which have not created pathways for regular migration from around the world are strongly encouraged to do so on an urgent basis, in order to help alleviate the pressure on global migrants to migrate in an irregular fashion. The Independent Expert is

¹²⁴ Ibid

¹²⁵ See Scherer and Di Giorgio, “Italy and France try to patch up migrant row, draw papal rebuke”.

pleased to see that this key human rights-based international solidarity concern is likely to be addressed to some extent in the Global Compact for Safe, Orderly and Regular Migration, which is currently under negotiation;

(d) The expansion of existing regular migration pathways: States that have already created pathways for regular migration into their territories are strongly encouraged to enact laws and take other measures to ensure a significant expansion of the numbers of global migrants accommodated through such avenues. The Independent Expert is also pleased to see that this issue is likely to be addressed, to some extent, in the Global Compact;

(e) A more effective European Union internal solidarity mechanism: more effort needs to be made by European Union States to implement in effective and just ways its internal solidarity mechanisms for sharing and managing the global migrants that seek to enter the European Union area. The Independent Expert welcomes the increased efforts that have been made in this regard, including the agreement reached in Brussels on 28 June 2018;

(f) Delegitimize extremism and populist antagonism against global migrants: Consistent with their obligations under articles 4 and 7 of the Convention on the Elimination of All Forms of Racial Discrimination, States should make greater efforts (within the limits of the rights of everyone to freedom of expression and association) to discourage and delegitimize extremism and populist antagonism and rhetoric against migrants. These ills strongly negate the values of human rights-based international solidarity and run contrary to the proposed draft declaration on the right to international solidarity;

(g) End or modify efforts to externalize continental borders: efforts to externalize the borders of continental or regional arrangements to other continents and regions, through the adoption of international agreements of the sort that tend to undermine rather than bolster the human rights and dignity of migrants, should be strongly discouraged. Such agreements tend to lead to significant human rights violations, offend the spirit of human rights-based international solidarity and run contrary to the letter of the draft declaration on the right to international solidarity.